

Part 2

Mining Severance Tax

59-5-201 Definitions.

As used in this part:

- (1)
- (a) "Metalliferous minerals" includes any ore, metal, or other substance containing the following:
- (i) aluminum;
 - (ii) antimony;
 - (iii) arsenic;
 - (iv) barium;
 - (v) beryllium;
 - (vi) bismuth;
 - (vii) boron;
 - (viii) cadmium;
 - (ix) calcium;
 - (x) cerium;
 - (xi) cesium;
 - (xii) chromium;
 - (xiii) cobalt;
 - (xiv) columbium;
 - (xv) copper;
 - (xvi) gallium;
 - (xvii) germanium;
 - (xviii) gold;
 - (xix) hafnium;
 - (xx) indium;
 - (xxi) iridium;
 - (xxii) iron;
 - (xxiii) lanthanum;
 - (xxiv) lead;
 - (xxv) lithium;
 - (xxvi) manganese;
 - (xxvii) mercury;
 - (xxviii) molybdenum;
 - (xxix) nickel;
 - (xxx) osmium;
 - (xxxi) palladium;
 - (xxxii) platinum;
 - (xxxiii) praseodymium;
 - (xxxiv) rare earth metals;
 - (xxxv) rhenium;
 - (xxxvi) rhodium;
 - (xxxvii) rubidium;
 - (xxxviii) ruthenium;
 - (xxxix) samarium;
 - (xl) scandium;

- (xli) selenium;
 - (xlii) silicon;
 - (xlili) silver;
 - (xliv) sodium;
 - (xlv) strontium;
 - (xlvi) tantalum;
 - (xlvii) tellurium;
 - (xlviii) thallium;
 - (xlix) thorium;
 - (l) tin;
 - (li) titanium;
 - (lii) tungsten;
 - (liii) uranium;
 - (liv) vanadium;
 - (lv) yttrium;
 - (lvi) zinc; or
 - (lvii) zirconium.
- (b) "Metalliferous minerals" does not include:
- (i) chloride compounds or salts;
 - (ii) potash;
 - (iii) rock, sand, gravel, and stone products;
 - (iv) gypsum;
 - (v) sulfur or sulfuric acid;
 - (vi) gem stones;
 - (vii) ammonium nitrate;
 - (viii) carbon dioxide;
 - (ix) oil, gas, coal, and all carboniferous materials; or
 - (x) phosphate.
- (2) "Mine" means an operation for extracting minerals and includes any deposit of valuable metalliferous minerals that are being extracted from a natural deposit, or a secondary source including tails, slag, waste dumps, or other similar secondary source, whether in solution or otherwise.
- (3) "Mining" means the act, process, or work of extracting minerals from their natural occurring environment or from a mine, and transporting or moving those minerals to the point of processing, use, or sale. "Mining" includes the process of leaching minerals from their naturally occurring deposit.
- (4) "Ore" means raw materials in their natural state or condition prior to beneficiation or processing, and includes mined raw materials extracted prior to further processing. "Ore" includes any metalliferous material whose metal content is less than 15% and does not include any material whose metal content is 15% or greater.

Amended by Chapter 287, 1990 General Session

59-5-202 Severance tax -- Rate -- Computation -- Annual exemption.

- (1) Every person engaged in the business of mining or extracting metalliferous minerals in this state shall pay to the state a severance tax equal to 2.6% of the taxable value of all metals or metalliferous minerals sold or otherwise disposed of.

- (2) If the metals or metalliferous minerals are shipped outside the state, this constitutes a sale, and the finished metals or the recoverable units of finished metals from the metalliferous minerals shipped are subject to the severance tax. If the metals or metalliferous minerals are stockpiled, the tax is not applicable until they are sold or shipped out of state. For purposes of the tax imposed by this chapter, uranium concentrates shall be considered to be finished metals. The owner of the metals or metalliferous minerals that are stockpiled shall report to the commission annually, in a form acceptable to the commission, the amount of metalliferous minerals so stockpiled. Metals or metalliferous minerals that are stockpiled for more than two years, however, are subject to the severance tax.
- (3) An annual exemption from the payment of the tax imposed by this chapter upon the first \$50,000 in gross value of the metalliferous mineral is allowed to each mine.
- (4) These taxes are in addition to all other taxes provided by law and are delinquent, unless otherwise deferred, on June 1 next succeeding the calendar year when the metalliferous mineral is produced and sold or delivered.

Amended by Chapter 295, 1990 General Session

59-5-203 Determining taxable value.

- (1) Except as provided in Subsection (3), the basis for computing the gross proceeds, prior to those deductions or adjustments specified in this chapter, in determining the taxable value of the metals or metalliferous minerals sold or otherwise disposed of, in the order of priority, is as follows:
 - (a) If the metals or metalliferous mineral products are actually sold, the value of those metals or metalliferous mineral products shall be the gross amount the producer receives from that sale, provided that the metals or metalliferous mineral products are sold under a bona fide contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates, gross proceeds shall be the gross amount the producer receives from the sale of processed uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a bona fide contract of sale between unaffiliated parties.
 - (b) If the metals or metalliferous mineral products are not actually sold but are shipped, transported, or delivered out of state, the gross proceeds shall be the multiple of the recoverable units of finished metals, or of the finished metals contained in the metalliferous minerals shipped, and the average daily price per unit of contained metals as quoted by an established authority for market prices of metals for the period during which the tax imposed by this chapter is due. The established authority or authorities shall be designated by the commission by rule adopted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
 - (c) In the case of metals or metalliferous minerals not sold, but otherwise disposed of, for which there is no established authority for market prices of metals for the period during which the tax imposed by this chapter is due, gross proceeds is determined by allocating to the state the same proportion of the producer's total sales of metals or metalliferous minerals sold or otherwise disposed of as the producer's total Utah costs bear to the total costs associated with sale or disposal of the metal or metalliferous mineral.
 - (d) In the event of a sale of metals or metalliferous minerals between affiliated companies which is not a bona fide sale because the value received is not proportionate to the fair market value of the metals or metalliferous minerals or in the event that Subsection (1)(a), (b), or (c) are not applicable, the commission shall determine the value of such metals or metalliferous minerals

- in an equitable manner by reference to an objective standard as specified in a rule adopted in accordance with the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) For all metals except beryllium, the taxable value of the metalliferous mineral sold or otherwise disposed of is 30% of the gross proceeds received for the metals sold or otherwise disposed of by the producer of the metal.
- (3)
- (a) Beginning on January 1, 1990, through December 31, 2004, for beryllium sold or otherwise disposed of, the taxable value is 20% of the gross proceeds received for the beryllium sold or otherwise disposed of by the producer.
- (b)
- (i) Notwithstanding Subsection (1) or (4) and subject to Subsection (3)(b)(ii), beginning on January 1, 2005, the taxable value of beryllium sold or otherwise disposed of by the producer of the beryllium is equal to 125% of the direct mining costs incurred in mining the beryllium.
- (ii) For an action or proceeding filed on or after January 1, 2005, if the taxable value of beryllium is calculated under Subsection (3)(a) for purposes of imposing a tax on beryllium under this part, the taxable value of beryllium calculated under Subsection (3)(a) may not exceed the taxable value of beryllium calculated under Subsection (3)(b)(i).
- (4) Except as provided in Subsection (3), if the metalliferous mineral sold or otherwise disposed of is sold or shipped out of state in the form of ore, then the taxable value is 80% of the gross proceeds.

Amended by Chapter 382, 2008 General Session

59-5-204 Statements filed -- Contents -- Verification -- Falsification as perjury.

- (1) Every person engaged in the business of mining or extracting metalliferous minerals shall make and file with the commission, on or before June 1 of each year on forms furnished by the commission, a statement containing:
- (a) the name, description, and location of the mine owned and operated by the person during the preceding calendar year;
- (b) the number of tons of mineral mined during the preceding calendar year and the disposition of the mineral;
- (c) the total amount received during the preceding calendar year from the sale of minerals; and
- (d) such other reasonable and necessary information as the commission may require for the proper enforcement of this chapter as specified in a rule adopted under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2) The owner of the mine shall be responsible for the statement or report required by this section, but the principal lessee, contractor, or operator may, with the consent of the commission, report and pay the tax as agent for the owner. The owner shall be entitled to deduct and remit to the commission any tax chargeable upon the operations conducted by the lessees or other parties.
- (3) The statements or reports required to be filed with the commission shall be signed and sworn to by the person required to file the statements or reports, by a partner if a partnership, or by the president, secretary, or managing officer, if a corporation. Any willful false swearing as to the purported material facts set out in this report constitutes the crime of perjury and shall be punished as such under Title 76, Utah Criminal Code.

Amended by Chapter 382, 2008 General Session

59-5-206 Interest and penalty -- Overpayments.

- (1) In case of any failure to make or file a return required by this chapter, the penalty provided in Section 59-1-401 and interest at the rate and in the manner prescribed in Section 59-1-402 shall be charged and added to the tax. The amount so added to any tax, whether as a penalty, interest, or both, shall be collected at the same time and in the same manner and as a part of the tax.
- (2) An overpayment of a tax imposed by this chapter shall accrue interest at the rate and in the manner prescribed in Section 59-1-402.

Amended by Chapter 1, 1993 Special Session 2

Amended by Chapter 1, 1993 Special Session 2

59-5-207 Date tax due -- Extensions -- Installment payments -- Penalty on delinquencies -- Audit.

- (1) The tax imposed by this chapter is due and payable on or before June 1 of the year next succeeding the calendar year when the mineral is produced and sold or delivered.
- (2) The commission may, for good cause shown upon a written application by the taxpayer, extend the time of payment of the whole or any part of the tax for a period not to exceed six months. If an extension is granted, interest at the rate and in the manner prescribed in Section 59-1-402 shall be charged and added to the amount of the deferred payment of the tax.
- (3) Every taxpayer subject to this chapter whose total tax obligation for the preceding calendar year was \$3,000 or more shall pay the taxes assessed under this chapter in quarterly installments. Each installment shall be based on the estimated gross value received by the taxpayer during the quarter preceding the date on which the installment is due.
- (4) The quarterly installments are due as follows:
 - (a) for January 1 through March 31, on or before June 1;
 - (b) for April 1 through June 30, on or before September 1;
 - (c) for July 1 through September 30, on or before December 1; and
 - (d) for October 1 through December 31, on or before March 1 of the next year.
- (5)
 - (a) If the taxpayer fails to report and pay any tax when due, the taxpayer is subject to the penalties provided under Section 59-1-401, unless otherwise provided in Subsection (6).
 - (b) An underpayment exists if less than 80% of the tax due for a quarter is paid.
- (6) The penalty for failure to pay the tax due or underpayment of tax may not be assessed if the taxpayer's quarterly tax installment payment equals 25% of the tax reported and paid by the taxpayer for the preceding taxable year.
- (7) There shall be no interest added to any estimated tax payments subject to a penalty under this section.
- (8) The commission may conduct audits to determine whether any tax is owed under this section.

Amended by Chapter 228, 1995 General Session

59-5-208 Tax as lien.

The tax imposed by this chapter, together with penalties and interest, is and shall remain a lien upon the mine or mining claim from which the mineral is extracted, until the tax is paid. In the case of unpatented claims or leases on unpatented ground, the lien shall be upon the mining rights.

Enacted by Chapter 4, 1988 General Session

59-5-209 Adjudicative proceedings for correction of amount of tax.

If any person feels aggrieved because of the amount of the tax determined by the commission, the person may file a request for agency action with the commission within 30 days after notice is mailed to the person, requesting an adjudicative proceeding and the correction of the assessed tax.

Enacted by Chapter 4, 1988 General Session

59-5-210 Decisions of commission.

Every decision of the commission shall be in writing and notice of the decision shall be mailed to the taxpayer within 10 days. All decisions become final upon the expiration of 30 days after notice has been mailed to the taxpayer, unless proceedings are taken within such time for a review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, in which case it becomes final as specified in the Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

59-5-211 Condition precedent to judicial review.

- (1) Before seeking judicial review, the taxpayer shall deposit with the commission the full amount of taxes, interest, and other charges audited and stated in the decision of the commission.
- (2)
 - (a) If the party appealing executes an undertaking meeting the requirements of Subsection (2)(b), the party is not required to pay the taxes, interest, and other charges as a condition precedent to obtaining judicial review.
 - (b) The undertaking shall be filed with the commission in the amount and with the surety approved by the commission.
 - (c) The undertaking shall provide that, if the appeal is dismissed or the decision of the commission is affirmed, the party appealing will pay all costs and charges that may accrue against the party in the prosecution of the case.
 - (d) At the option of the party appealing, the undertaking may be in a sum sufficient to cover the taxes, interest, and other charges, audited or stated in the decision, plus the costs or charges that may accrue against the party appealing in the prosecution of the case.

Enacted by Chapter 4, 1988 General Session

59-5-215 Disposition of taxes collected -- Credit to General Fund.

Except as provided in Section 51-9-305, a tax imposed and collected under Section 59-5-202 shall be paid to the commission, promptly remitted to the state treasurer, and credited to the General Fund.

Amended by Chapter 241, 2014 General Session